



STATE OF CALIFORNIA
THE RESOURCES AGENCY
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS

License for Diversion and Use of Water

APPLICATION 23522

PERMIT 16126

LICENSE 10711

THIS IS TO CERTIFY, *That*

ALBERT J. HABERGER AND PATRICIA S. HABERGER
2056 BIG RANCH ROAD, NAPA, CALIFORNIA 94558

HAVE *made proof as of* JULY 3, 1975 *(the date of inspection)*
to the satisfaction of the State Water Resources Control Board of a right to the use of the water of
AN UNNAMED STREAM IN NAPA COUNTY

tributary to NAPA RIVER

for the purpose of IRRIGATION USE
under Permit 16126 *of the Board and that the right to the use of this water has been perfected*
in accordance with the laws of California, the Regulations of the Board and the permit terms; that the
priority of this right dates from MAY 29, 1970 *and that the amount of water to which*
this right is entitled and hereby confirmed is limited to the amount actually beneficially used for the stated
purposes and shall not exceed THIRTY-THREE THOUSANDTHS (0.033) CUBIC FOOT PER SECOND,
TO BE DIVERTED FROM APRIL 15 TO OCTOBER 15 OF EACH YEAR. THE MAXIMUM AMOUNT DIVER
UNDER THIS LICENSE SHALL NOT EXCEED 9.8 ACRE-FEET PER YEAR.

THE POINT OF DIVERSION OF SUCH WATER IS LOCATED:

SOUTH 400 FEET AND WEST 1,400 FEET FROM NE CORNER OF SECTION 34, T6N, R4W,
MDB&M, BEING WITHIN NW1/4 OF NE1/4 OF SAID SECTION 34.

A DESCRIPTION OF LANDS OR THE PLACE WHERE
SUCH WATER IS PUT TO BENEFICIAL USE IS AS FOLLOWS:

6.5 ACRES WITHIN NW1/4 OF NE1/4 OF SECTION 34, T6N, R4W, MDB&M.

UPON A JUDICIAL DETERMINATION THAT THE PLACE OF USE UNDER THIS LICENSE OR A
PORTION THEREOF IS ENTITLED TO THE USE OF WATER BY RIPARIAN RIGHT, THE RIGHT SO
DETERMINED AND THE RIGHT ACQUIRED UNDER THIS LICENSE SHALL NOT RESULT IN A
COMBINED RIGHT TO THE USE OF WATER IN EXCESS OF THAT WHICH COULD BE CLAIMED UNDER
THE LARGER OF THE TWO RIGHTS.

THE QUANTITY OF WATER DIVERTED UNDER THIS LICENSE IS SUBJECT TO MODIFICATION

NOTICE OF ASGD; PATRICIA HARBERGER, TRUSTEE FOR HARBERGER TRUST FUND B

Licensee shall allow representatives of the Board and other parties, as may be authorized from time to time by the Board, reasonable access to project works to determine compliance with the terms of this license.

All rights and privileges under this license including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

Reports shall be filed promptly by licensee on appropriate forms which will be provided for the purpose from time to time by the Board.

The right hereby confirmed to the diversion and use of water is restricted to the point or points of diversion herein specified and to the lands or place of use herein described.

This license is granted and licensee accepts all rights herein confirmed subject to the following provisions of the Water Code:

- Section 1625. Each license shall be in such form and contain such terms as may be prescribed by the Board.
- Section 1626. All licenses shall be under the terms and conditions of this division (of the Water Code).
- Section 1627. A license shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code) but no longer.
- Section 1628. Every license shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a license is issued takes the license subject to the conditions therein expressed.
- Section 1629. Every licensee, if he accepts a license does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any license granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any licensee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any licensee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).
- Section 1630. At any time after the expiration of twenty years after the granting of a license, the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State shall have the right to purchase the works and property occupied and used under the license and the works built or constructed for the enjoyment of the rights granted under the license.
- Section 1631. In the event that the State, or any city, city and county, municipal water district, irrigation district, lighting district, or political subdivision of the State so desiring to purchase and the owner of the works and property cannot agree upon the purchase price, the price shall be determined in such manner as is now or may hereafter be provided by law for determining the value of property taken in eminent domain proceedings.

Dated: SEP. 3 1976

R. L. Rosenberger
Chief, Division of Water Rights

10711

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

ORDER

Application 23522 Permit 16126 License 10711

**ORDER AMENDING LICENSE BY ADDING A CONDITION TO PRECLUDE
UNAUTHORIZED DIVERSION OF SURFACE WATERS AND ADDING NEW AND
UPDATED LICENSE TERMS**

WHEREAS:

1. License 10711 was issued to Albert J. Haberger and Patricia S. Haberger on September 3, 1976, pursuant to Application 23522 and was recorded with the County Recorder of Napa County on September 20, 1976.
2. License 10711 was subsequently assigned to Patricia S. Haberger, Trustee for Haberger Trust Fund B on February 1, 1989.
3. The Division of Water Rights conducted an inspection of the project covered by License 10711 on October 27, 1998. This inspection found that the water distribution system under License 10711 was capable of delivering water from the unnamed stream to parcels of land which were not within the licensed place of use and which were not riparian to the unnamed stream.
4. The State Water Resources Control Board (SWRCB) has determined that in order to preclude the threat of unauthorized diversions under License 10711, an additional license condition is necessary.
5. The SWRCB will also add its updated standard continuing authority and water quality objective terms and a term to prevent any act which results in the taking of a threatened or endangered species that have been or may be listed under the federal Endangered Species Act and/or the California Endangered Species Act.

NOW, THEREFORE, IT IS ORDERED THAT:

The following new or updated terms and conditions be added to License 10711:

1. Licensee shall maintain the check valve in the water distribution pipeline on Assessors Parcel No. 38-190-0, the location of which was verified by the Division's field inspection on March 24, 2000, to ensure that water diverted from the unnamed stream is not delivered to land outside the authorized place of use or delivered to land that is not riparian to the unnamed stream. If there is a future need to change the location of the check valve, the change shall only be made after obtaining written approval from the Chief of the Division of Water Rights.
2. The continuing authority condition shall be updated to read as follows:

Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this license, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the SWRCB in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of SWRCB may be exercised by imposing specific requirements over and above those contained in this license with a view to eliminating waste of water and to meeting the reasonable water requirements of licensee without unreasonable draft on the source. Licensee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this license and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that unless the such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the SWRCB also may be exercised by imposing further limitations on the diversion and use of water by the licensee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the SWRCB determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

3. The water quality objectives shall be updated to read as follows:

The quantity of water diverted under this license is subject to modification by the SWRCB if, after notice to the licensee and an opportunity for hearing, the SWRCB finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the California Water Code. No action will be taken pursuant to this paragraph unless the SWRCB finds that: (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

4. An endangered species term shall be added to read as follows:

This license does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (California Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the licensee shall obtain authorization for an incidental take prior to construction or operation of the project. Licensee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this license.

Dated: **JUL 26 2000**


HARRY M. SCHUELLER, Chief
Division of Water Rights